

APPEAL NO. 010562

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 28, 2001. With respect to the issue before him, the hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to and includes a medial meniscus tear, right iliotibial (IT) band syndrome, and chondromalacia of the patella, but does not extend to and include posterior tibular nerve damage. The appellant (carrier) argues on appeal that there is insufficient evidence to support the hearing officer's decision. The appeal file contains no response from the claimant. The claimant also did not appeal the determination that his compensable injury does not extend to and include posterior tibular nerve damage.

DECISION

Affirmed.

Conflicting evidence was presented at the hearing regarding the extent of injury sustained by the claimant on the date of injury. Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In the present case, there is sufficient evidence in the record to support the hearing officer's determination that the compensable injury sustained by the claimant extends to and includes a medial meniscus tear, right IT band syndrome, and chondromalacia of the patella. Nothing in our review of the record reveals that the hearing officer's extent-of-injury determination is so against the great weight of the evidence as to compel its reversal on appeal.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge